pursuance of the law in force in Malaysia permitting such execution. Malaysia may, in exercise of its sovereign power, bring an end to that state of affairs at any time it wishes to.

In the case of *Ibralebbe* v. *Reginam* [8] the Judicial Committee had to consider a somewhat similar proposition to the effect that the continuance of appeals to the Privy Council from Ceylon after that country attained independence, was inconsistent with that country's new status as an independent country. After reaching the conclusion that there was nothing in the constitutional instruments that involved a repeal of this right by necessary implication, the Judicial Committee end their consideration of the question of inconsistency with full sovereignty with these words at page 261:—

"....if it is recognised, as it must be, that the legislative competence of the Parliament of Ceylon includes power at any time. if it thinks right, to modify or terminate the Privy Council appeal from its courts, true independence is not in any way compromised by the continuance of that appeal, unless and until the sovereign legislative body decides to end it."

These observations are applicable also to the argument on inconsistency addressed to this court in these proceedings.

For these reasons, notwithstanding the decision in *Menon's* case, execution in Singapore of processes issued in a British possession pursuant to Part II of the 1881 Act and the Order-in-Council of 1918 is not at the present time an infringement of the sovereignty of Malaysia.

For the reasons I have given, I agree with the Lord President that the answer to the question referred to this Court is that the Order-in-Council of 1918 and sections 13 to 19 of the Fugitive Offenders Act, 1881, are still part of the law of Singapore in relation to Hong Kong, notwithstanding the incorporation of Singapore in the independent Federation of Malaysia.

Order accordingly.

Solicitors: *David Marshall.*

DARUS BIN AHMAD v. PUBLIC PROSECUTOR

[A.Cr.J. (Suffian J.) November 18, 1964]

[Kangar — Criminal Appeal No. 78 of 1964]

Local Authority — Erection of unauthorised building — Liability of owner — Meaning of "owner" — Chairman of company not liable — Town Boards Enactment, (Cap. 137), ss. 2, 91 and 93(ii).

The appellant, the chairman of a company was charged for erecting an unauthorised building. He pleaded guilty and was convicted. The land was held by the company on a temporary occupation licence. On appeal,

Held: the person liable for the erection of the unauthorised building under the Town Boards Enactment is the owner of the holding whereon the building was erected and as there was no admission or evidence that the appellant was the owner of the land, the conviction must be quashed.

Cases referred to:—

(1) *R.* v. *Alsagoff* [1950] M.L.J. 249.

(2) *Lim Beng Teck* v. *R.* [1957] M.L.J. 21.

(3) *Syed Ahmad Aljunied* v. *R.* (1962) 3 M.C. 312.

MAGISTRATE'S CRIMINAL APPEAL.

Ismi bin Ismail for the appellant.

Wan Ismail (Deputy Public Prosecutor) for the Public Prosecutor.

Suffian J.: An unauthorised building was put up on a piece of land within a Town Council area in Perlis contrary to section 91(i) of the F.M.S. Town Board Enactment which applies in Perlis. The land was held under a T.O.L. by the Sharikat Nelayan Kuala Perlis Bekerjasama? Tanggongan Berhad, of which Darus bin Ahmad (appellant) was chairman. The appellant was charged as "chairman" of the sharikat. At first he claimed trial but on the day fixed for the hearing he changed his mind and pleaded guilty, "admitting responsibility as chairman of the sharikat", whereupon he was convicted and fined $150 or one month's imprisonment and ordered to demolish the building. He appeals, his main ground of appeal being that the owner should have been charged, namely the sharikat the holder of the T.O.L., not him, and that therefore the proceedings against him were null and void. To this the Public Prosecutor replies that as the accused pleaded guilty there could be no appeal except against sentence only.

The law here is almost the same as in Singapore. Having studied *Alsagoff's case,* [1] *Lim Beng Teck's case* [2] and *Aljunied's case* [3] I am quite clear in my mind that despite the language of sub-section (i) of section 91 of the F.M.S. Town Boards Enactment, the person liable is not the person "who commenced the building operations", but, because of sub-section (ii) of section 93, "the owner of the holding whereon such building was erected" and no other, and the owner means (section 2) "the person for the time being receiving the rent of the holding in connection with which the word is used whether on his own account or as agent or trustee for any other person, or who would so receive the same if such holding were let to a tenant; and in any case in which such person cannot be found or makes default shall include also the occupier, if any, of such holding". Therefore to hold the appellant guilty there must be evidence or an admission that he was the owner of the land within the meaning of section 2, but despite an anxious search through the record of the proceedings I have failed to find in it such evidence or admission, he admitting responsibility only as chairman of the sharikat,

and so, finding myself in the same position as Murray-Aynsley C.J. in the first case cited above, I must allow this appeal. The conviction is accordingly quashed, the sentence set aside, the fine if paid to be refunded and the order of demolition revoked.

Appeal allowed.

Solicitors: *Jayadeva, Zahir & Ismi.*

TAN CHYE CHEW & ANOR. v. EASTERN MINING AND METALS CO. LTD.

[F.C. (Wee Chong Jin C.J. (Singapore), Wylie C.J. (Borneo) and Tan Ah Tah F.J.) November 19, 1964]

[Singapore — Federal Court Civil Appeal No. 6 of 1964]

Contract — Misrepresentation — Fraud — Onus of proof.

In this case the respondent had entered into two contracts, one with the first appellant for the assignment of rights to prospect certain mining land including in an approved application for prospecting permit and the second with the second appellant for the payment of commission for the second appellant's part in bringing about the first contract. It was alleged that the second appellant had shown to a geologist employed by the respondent some land which was later discovered not to be included in the approved application. The trial judge found that the second appellant, with the knowledge of the first appellant, had knowingly and deliberately shown the wrong area, that the second appellant was guilty of fraud and that as the second appellant was the agent of the first appellant, the first appellant was liable therefor. The appellants appealed against the decision of the trial judge.

Held: (1) a high standard of proof is required in cases where fraud is alleged;

(2) in this case there was insufficient evidence to support the finding of fraud against either appellant and consequently there can be no rescission on the ground of fraud and the award of damages for fraud should be set aside;

(3) the contracts entered into between the respondent company and the appellants were not voidable because of misrepresentation;

(4) the respondent company had not on the evidence proved that the second appellant was the agent of the first appellant in negotiating the contract.

Cases referred to:—

(1) *Nederlandsche Handel-Maatschappij N.V.* v. *Koh Kim Guan* [1959] M.L.J. 173.

(2) *Hornal* v. *Neuberger Products Ltd.* [1957] 1 Q.B. 247.

(3) *Bater* v. *Bater* [1951] P. 35.

FEDERAL COURT.

R. R. Chelliah for the 1st appellant.

Richard Talalla for the 2nd appellant.

P. J. Mooney for the respondent.

Wee Chong Jin C.J. (Singapore): Having arrived at the conclusion that I would allow the appeal of both appellants and before I have had the opportunity of setting out the reasons which led me to this conclusion I have had the advantage of reading the judgment of Wylie C.J. I find I am in such complete agreement with the reasoning by which he has arrived at the same result as mine that I propose merely to say that I agree with him that the appeal of both appellants should be allowed, the judgment of the court below should be set aside and judgment should be entered in favour of both appellants on all claims with costs both of the appeal and the court below.

Wylie C.J. (Borneo): These proceedings have their origin in two contracts concluded one between the respondent and the first appellant and the other between the respondent and second appellant. The first contract provided for the assignment to the respondent of all the rights and interests of the first appellant under an agreement made between the latter and his nephew, one H. K. Loon. Under this agreement first appellant had acquired rights to prospect and mine certain land included in an approved application for a prospecting permit covering that land. The nephew was the applicant named in the approved application. Under the second contract the respondent agreed to make to the second appellant certain payments by way of commission for the latter's part in bringing about the first contract. In the course of negotiations, second appellant had shown to a geologist employed by respondent some land which, on the findings of the trial judge, second appellant had represented as being included in the approved application. The land appeared to the geologist to offer very good prospects. After the contract was concluded, the respondent's employees discovered that this land was not included in the approved application. Proceedings were then brought claiming damages from both appellants and there was included an allegation that second appellant had knowingly and fraudulently shown the geologist the wrong piece of land. The trial judge found that both appellants had acted fraudulently.

The finding of the trial judge in which he accepted the evidence given by the witnesses for the plaintiff was not challenged. On the hearing of this appeal, thereof, it was common ground that the second appellant showed the plaintiff's employee, one Bush, the wrong piece of land — that is to say, a piece of land over which the first appellant had no mining rights, but over which the second appellant represented that the first appellant did have rights under an approved application which would (and in fact did) lead to the issue of a prospecting permit. The appellants, in their grounds of appeal, challenged the finding that the second appellant acted fraudulently in that he showed Bush this piece of land